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SEP 25 1950
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

ALEXANDER PORHOWNIK and 25 TRINITY CORPORATION, *Petitioners,*

v.

UNITED STATES OF AMERICA,

No. 197.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITIONERS' REPLY BRIEF.

POINT I.

The brief for respondent is insufficient. It does not answer the points raised by the petitioners and does not cover sufficiently the law on the subject.

Petitioners' brief in specification of errors indicated *12 errors* by the United States Court of Appeals for the Second Circuit in the case under consideration. But the respondent's brief covers only errors numbered as 2, 6, 7, 9 and 12. That indicates that the respondent could not controvert the other seven errors indicated in the petitioners' brief.

POINT II.

Respondent admits in the brief that there was no emergency situation that would warrant the breach by Congress of a previous guaranty given to the landlords by the subsection 204 (B) of the Housing and Rent Act of 1947.

The respondent in its brief stated on page 5:

> "Moreover the questions which petitioner seeks to raise could at most affect only a very limited class of cases",

and on page 9:

> "It is extremely unlikely that the questions here raised will be presented again. The issue can arise only as to property with respect to which a statutory lease was entered into during 1947 and was terminated between December 31, 1947 and April 1, 1948."

The United States Court of Appeals for the Second Circuit found that Congress in 1949 abrogated the right given to the landlords by the subsection 204 (B) of the Housing and Rent Act of 1947 (which right was acquired by the landlords at a cost of many thousands of dollars in improvements) on the ground that:

> "To permit those, who are in possession of an inadequate supply, to exploit their advantage without restraint *may lead to the gravest disturbances.*"

But now from the respondent's brief it follows that there could be no "gravest disturbances" because the respondent's brief states that this case "could at most affect only a very limited class of cases" (Respondent's Brief, p. 5).

It is apparent that if there was no emergency, an impairment of landlords' rights afforded to them by the subsection 204 (B) of the Housing and Rent Act of 1947 will be violative of the Fifth and Fourteenth Amendments.

POINT III.

There is a controversy between the District Court and the Court of Appeals as to the clearness of Section 204 (b)(3) of the Housing and Rent Act of 1949, which controversy should be cleared up by the United States Supreme Court.

Respondent's brief states (p. 8) that the Trial Court said:

> "Section 204 (b)(3) of the Housing and Rent Act of 1949 is direct and explicit and applicable to this case" and that the Court of Appeals also found that "there is no uncertainty in the standard to be applied."

The Trial Court indeed wrongly found that Section 204 (b)(3) of the Housing and Rent Act of 1949 is *direct and explicit* but the three learned judges of the Court of Appeals found the same section to be "full of verbal thickets which must be penetrated and are inpenetrable without considerable labor", that "the meaning is indeed obscure without a good deal of effort" and that "the proper understanding of the language does demand a somewhat exacting scrutiny" (Record, fol. 40).

The only way to clear up this divergence of opinion between the District Court and the United States Circuit Court as to the clarity of the Section 204 (b)(3) is to grant the writ of certiorari and to decide whether this section is a clear one or is just a mass of "verbal thickets", which will bring this section under the rule stated in the

case of *U. S.* v. *Ballard,* 12 F. Supp. 321, that a statute which is:

> "in terms so vague that men of common intelligence must necessarily guess its meaning and differ as to its application violates the first principles of due process of law."

It is respectfully added that though the present case concerns only two leases from 31 leases entered into by the petitioner, 25 Trinity Corporation and its tenants, the present case is nevertheless *a test case* involving the rights of several thousand landlords who are in the same position as the petitioner, 25 Trinity Corporation. The decision by the United States Supreme Court therefore will clear the position not only for the petitioner *but for the several thousand other landlords* in similar circumstances.

CONCLUSION.

The Writ of Certiorari Should Be Granted.

Respectfully submitted,

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As of Counsel.